

**Atty Docket: IDF 1660 (4000-04700)****Patent****REMARKS/ARGUMENTS*****Status of Claims***

Claims 1-20 are currently pending in this application.

Claims 1 and 12 have been amended.

Applicants hereby request further examination and reconsideration of the presently claimed application.

***35 USC § 103 Rejections***

Claims 1-20 stand rejected under 35 USC § 103(a) as being unpatentable over *Aoki* (U.S. 6,757,255). Applicants respectfully submit that the art of record does not establish a *prima facie* case of obviousness as to amended claims 1-20. According to MPEP § 2142, three basic criteria must be met to establish a *prima facie* case of obviousness:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. **Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

The Examiner cannot make out a *prima facie* case of obviousness because *Aoki* does not teach or suggest all of the claimed limitations. More specifically, *Aoki* fails to teach or suggest a bandwidth measurement device configured for **independently** determining the upload and/or the download data transfer rates between a client and a service node. *Aoki* teaches that his bandwidth measurement device measures the bandwidth of the network using the round trip transmission time. See *Aoki*, abstract, line 4, col. 7, line 7, *et seq.* However, when using the round trip transmission time to compute the bandwidth, the round trip bandwidth is measured. By measuring

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the round trip bandwidth as a whole and not the individual upload and download bandwidth, it is impossible to discern the individual operating characteristics of the upload bandwidth or the download bandwidth. *Aoki* fails to teach any bandwidth measurement in which the upload bandwidth or the download bandwidth is distinguished from the round trip bandwidth. By contrast, the Applicants' invention allows the user to independently measure the upload bandwidth and the download bandwidth, so that the user can determine the individual characteristics of the upload bandwidth and the download bandwidth. Claims 1 and 12 capture this limitation in the amended language that the bandwidth measurement device is configured for independently determining upload and/or download data transfer rates between a client and a service node. *Aoki* does not teach or suggest a bandwidth measurement device is configured for independently determining upload and/or download data transfer rates between a client and a service node, and thus does not teach or suggest all of the claim limitations. Consequently, the Examiner cannot make out a *prima facie* case of obviousness with respect to claims 1-20 and claims 1-20 should be allowed.

*Atty Docket: IDF 1660 (4000-04700)**Patent***CONCLUSION**

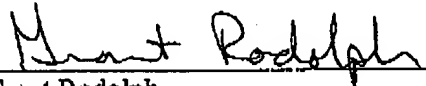
Consideration of the foregoing amendments and remarks, reconsideration of the application, and withdrawal of the rejections and objections is respectfully requested by Applicants. No new matter is introduced by way of the amendment. It is believed that each ground of rejection raised in the Office Action dated July 19, 2005 has been fully addressed. If any fee is due as a result of the filing of this paper, please appropriately charge such fee to Deposit Account No. 21-0765, Sprint. If a petition for extension of time is necessary in order for this paper to be deemed timely filed, please consider this a petition therefore.

If a telephone conference would facilitate the resolution of any issue or expedite the prosecution of the application, the Examiner is invited to telephone the undersigned at the telephone number given below.

Respectfully submitted,

Date: \_\_\_\_\_

9/8/05



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